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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
CLEVELAND

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

CASE #

1:19 MC 77

In Re:

Application of EDWARD D. FAGAN,  
pursuant to 28 U.S.C. § 1782 for Judicial Assistance in  
obtaining evidence from (i) HUNTINGTON NATIONAL  
BANK and DAVID GORY and (ii) J. P. MORGAN  
CHASE BANK and JOHNBULL EJOVI  
for use in a Foreign Tribunal and Proceeding

JUDGE POLSTER

**APPLICATION FOR JUDICIAL ASSISTANCE  
PURSUANT TO 28 U.S.C. § 1782 TO AID IN FOREIGN PROCEEDING**

EDWARD D. FAGAN (hereinafter "Applicant"), acting as a pro se Applicant, hereby makes the following application for limited judicial assistance pursuant to 28 U.S.C. § 1782 to aid in the Foreign Proceeding(s) which is currently pending in and under ongoing criminal investigation in the Republic of South Africa (SAPS Sinoville Case # 3471/1/2019) related to the commission of a "Nigerian Type Internet & Bank Fraud" through which Applicant, his predecessors and partners were solicited to send monies to various banks, including HUNTINGTON NATIONAL BANK ("HUNTINGTON") and JP MORGAN CHASE ("CHASE") for the benefit of individuals including DAVID GORY ("GORY") and JOHNBULL EJOVI ("EJOVI") which monies they believed were being sent to acquiring a lawful interest in an estate, property and other assets and the evidence sought in this Application is in the custody, possession and/or control of witnesses (i) HUNTINGTON and GORY and (ii) CHASE and EJOVI each of which can be found in this this District and each of which were used in the fraud against Applicant, his predecessors and partners and respectfully shows the Court the following:

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**INTRODUCTION**

1  
2           1.       There is an ongoing criminal investigation in the Republic of South Africa (SAPS  
3 Sinoville Case # 3471/1/2019) related to the operation of domains and emails – i.e.  
4 draftissue.com (pretending to be a Chase Bank domain) and fddic.com (pretending to be the  
5 Federal Deposit Insurance Corporation) domains and associated email addresses were used with  
6 other similarly fake domains and associated email addresses in the commission of a massive  
7 coordinated Internet Fraud through which Applicant, his predecessors and partners were  
8 defrauded out of millions of dollars.

9           2.       The fraud included fake documents and instructions being sent from the persons /  
10 entities who were behind the fake domains and associated email addresses, including the ones  
11 that are being investigated and prosecuted in South Africa and which led/directed Applicant, his  
12 predecessors and partners to send / wire monies to banks and account holders such as (i)  
13 HUNTINGTON and GORY and (ii) CHASE and EJOVI.

14           3.       This Application is to get information from (i) HUNTINGTON and GORY and  
15 (ii) CHASE and EJOVI that will identify the persons / entities behind the above domains and  
16 email addresses, who / which are the persons who gave the instructions to send monies to (i)  
17 HUNTINGTON and GORY and (ii) CHASE and EJOVI.

18           4.       Witnesses (i) HUNTINGTON and GORY and (ii) CHASE and EJOVI have  
19 evidence that will assist the South African investigators and prosecutors as they pursue and bring  
20 to justice those persons / entities who / which are behind the fake domains, the fake email  
21 addresses and the fake documents that were used to solicit Applicant, his predecessors and  
22 partners to wire thousands of dollars that Applicant, his predecessors and partners believed were

1 to be used to repatriate the estate monies, assets and properties.

2 5. This Application for Judicial Assistance is to obtain evidence as allowed pursuant  
3 to Section 1782(a), and the US Supreme Court in *Intel v. Advanced Micro Devices, Inc.*, 542  
4 U.S. 241 (2004) so that the evidence obtained from persons and entities residing and/or found  
5 within this judicial district so that evidence “ . . . for use in a proceeding in a foreign or  
6 international tribunal, including criminal investigations conducted before formal accusation.”

7 6. This Application relates to a “Nigerian Type Internet Fraud” through which  
8 emails were sent from fake domains and fake email addresses associated with the fake domains  
9 (some of which pretended to be from Chase Bank, Bank of America, Fidelity Investments, the  
10 Federal Deposit Insurance Corporation) and fake documents purportedly from those entities.

11 7. These fake domains, fake email addresses and fake documents were used to  
12 defraud Applicant and his partners and predecessors into sending millions of dollars in an effort  
13 to secure the repatriation of the Inheritance Monies to which they believed they were acquiring a  
14 lawful interest but which monies were instead sent to banks such as HUNTINGTON and  
15 CHASE and account holders such as GORY and EJOVI, who / which had nothing to do with the  
16 purported assets or alleged repatriation of the Inheritance monies.

17 8. Applicant, his predecessors and partners were tricked into sending monies to (i)  
18 HUNTINGTON at which GORY had an account and (ii) CHASE at which EJOVI had an  
19 account.

20 9. Specifically, the wire transfers that were sent included (i) January 3, 2018 transfer  
21 of \$15,000.00 to Account # XXXXXXXX9922 at HUNTINGTON with account beneficiary as  
22 GORY and (ii) February 9, 2017 transfer of \$35,000.00, February 10, 2017 transfer of

1 \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account # XXXXXX1725 at CHASE  
2 with account beneficiary as EJOVI.

3 10. HUNTINGTON and GORY and CHASE and EJOVI had nothing to do with the  
4 purported assets or alleged repatriation of the Inheritance monies.

5 11. The persons / entities that are being investigated and prosecuted in South Africa  
6 in SAPS Sinoville Case # 347/01/2019 used (i) HUNGTINGTON and GORY and (ii) CHASE  
7 and EJOVI to receive hundreds of thousands of dollars that were fraudulently solicited from  
8 Applicant, his predecessors and partners to repatriate the estate monies, assets and properties but  
9 which monies were later transferred on to the real persons / entities behind the fraud.

10 12. The real persons / entities behind the fraud had Applicant, his predecessors and  
11 partners send monies to (i) HUNTINGTON and GORY and (ii) CHASE and EJOVI so as to  
12 conceal their true identity of themselves and all others who were behind the "Nigerian Type  
13 Internet & Bank Fraud".

14 13. The South African investigators and prosecutors will use the evidence from this  
15 Application to assist them in identifying the connection between the South African  
16 persons/entities involved which used the domains and associated email and domains with the  
17 persons who directed that wire transfers be sent to (i) HUNTINGTON and GORY and (ii)  
18 CHASE and EJOVI and to ultimately bring these people to justice and shut down the fraud.

19 14. The evidence sought is in the custody, possession and/or control of (i)  
20 HUNTINGTON and GORY and (ii) CHASE and EJOVI and is relevant to investigation by  
21 South Africa Police Services – SAPS Sinoville Case No. 347/01/2019 and their future  
22 prosecutions.

1           15.     The South African investigators and prosecutors have already confirmed to  
2 Applicant that they welcome the evidence that can be gathered through this Application.

3           16.     While the evidence sought is primarily for use the South African Foreign  
4 Proceeding in which Applicant is the original complaining witness in SAPS Sinoville Case #  
5 347/01/2019 that is underway in the Republic of South Africa by the South African Police  
6 Services – Serious Commercial Crimes Unit – and in which the South African authorities are  
7 bringing in South African Interpol due to the international nature of the wrongdoings, the  
8 evidence will assist with other investigations that Applicant learned of after the commencement  
9 of the South African Case SAPS Sinoville Case # 347/01/2019. The evidence will also be used  
10 (i) to assist the FBI Field Office in New Orleans which is investigating these exact crimes and  
11 internet fraud and in which Applicant has an interest and for which the FBI continues to request  
12 Applicant’s assistance, information and evidence and (ii) the Royal Canadian Mounted Police  
13 (RCMP) investigation also commenced before Applicant’s involvement and pending in Canada.

14           17.     The scam / fraud committed against Applicant, his predecessors and partners,  
15 started in or about 2016 and is ongoing.<sup>1</sup>

16           18.     The scam/fraud was a variations of what cyber-crime and the law enforcement  
17 experts refer to as the “419 Letter Scam”<sup>2</sup>, “Romance Scam”<sup>3</sup> and “Advance Fee Scam”<sup>4</sup> which

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<sup>1</sup>           Applicant has been a victim of this fraud since early 2019. Applicant acquired and owns 100 % of the rights of others including Russ Daneluk (victim of this fraud starting in late 2016/early 2017) who was solicited through the emails and domains that sent the fake documents and the instructions as to where the wire transfers were to be sent.

<sup>2</sup>           <https://www.fbi.gov/scams-and-safety/common-fraud-schemes/nigerian-letter-or-419-fraud> - Nigerian letter frauds combine the threat of impersonation fraud with a variation of an advance fee scheme in which a letter mailed, or e-mailed, from Nigeria offers the recipient the “opportunity” to share in a percentage of millions of dollars that the author—a self-proclaimed government official—is trying to transfer illegally out of Nigeria.



1 include persons/entities connections to Nigeria, who have target persons in the United States and  
2 Canada and which use private persons, banks, shipping, travel and other companies through  
3 which the scammed monies are transferred.

4 19. Applicant has been told by the South African investigators and prosecutors that  
5 the Nigerian Type Internet & Bank Fraud to which Applicant, his predecessors and partners fell  
6 victim is one of the most sophisticated and longest running "Nigerian type" internet bank scams.

7 20. The evidence from this Application will also assist the FBI New Orleans Field  
8 Office investigations which in some areas appear to overlap and the investigators wish to  
9 cooperate with one another to ensure that the fraud is stopped and that those persons/entities  
10 involved and/or which benefitted from the fraud are brought to justice.

11 21. This Application seeks specific/limited information related to the wire transfers  
12 by Applicant's partners and predecessors including (i) the January 3, 2018 transfer of \$15,000.00  
13 to Account # XXXXXXXX9922 at HUNTINGTON with account beneficiary as GORY and (ii)  
14 the February 9, 2017 transfer of \$35,000.00, February 10, 2017 transfer of \$37,000.00 and  
15 March 2, 2017 transfer of \$15,000.00 to Account # XXXXXXXX1725 at CHASE with account  
16 beneficiary as EJOVI.<sup>5</sup>

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<sup>3</sup> [https://en.wikipedia.org/wiki/Romance\\_scam](https://en.wikipedia.org/wiki/Romance_scam) - A romance scam is a confidence trick involving feigning romantic intentions towards a victim, gaining their affection, and then using that goodwill to commit fraud. Fraudulent acts may involve access to the victim's money, bank accounts, credit cards, passports, e-mail accounts, or national identification numbers; or forcing the victims to commit financial fraud on their behalf. In many instances, a mail-order bride scam will also bait the victim into committing felonies to establish citizenship for the perpetrator.

<sup>4</sup> <https://www.fbi.gov/scams-and-safety/common-fraud-schemes/advance-fee-schemes> - An advance fee scheme occurs when the victim pays money to someone in anticipation of receiving something of greater value—such as a loan, contract, investment, or gift—and then receives little or nothing in return.

<sup>5</sup> There are / were other transfers to HUNTINGTON with account beneficiary as GORY and CHASE with account beneficiary as EJOVI. These wire transfers are representative of them all.

1           22.     The evidence that is in the possession of (i) HUNTINGTON and GORY and (ii)  
2 CHASE and EJOVI will or should show the persons or entities who were behind the fraud  
3 against Applicant, his predecessors and partners and how the transfers to (i) HUNTINGTON and  
4 with the account beneficiary as GORY and (ii) CHASE with the account beneficiary as EJOVI  
5 were connected to the domains and emails that are the subject of the South African foreign  
6 proceeding – SAPS Sinoville Case # 347/01/2019 investigations and future prosecution.

7           23.     Applicant is not seeking to circumvent any relevant evidence gathering laws.

8           24.     Applicant is not on a fishing expedition.

9           25.     Applicant is not looking for persons or entities against whom/which civil claims  
10 can be brought.

11           26.     Applicant is looking for information that will assist in the ongoing investigations  
12 and future prosecutions in South Africa foreign proceeding – SAPS Sinoville Case #  
13 347/01/2019. The evidence will also assist the FBI New Orleans Field Office investigations.  
14 The South African and FBI investigations are both directed at the Nigerian Internet / Banking  
15 Fraud to which Applicant, his predecessors and partners fell victims and the investigation appear  
16 to overlap.

17           27.     The request for the specific information in the Application, i.e. information  
18 related to the monies that were transferred as set forth in ¶ 21 above to (i) HUNTINGTON with  
19 the account beneficiary as GORY and (ii) CHASE and with the account beneficiary as EJOVI,  
20 came in part from South African Police Services lead investigator in SAPS Sinoville Case #  
21 347/01/2019.

22           28.     Capt. Chiloane confirmed that the information and documents requested from

1 entities such as (i) HUNTINGTON with account beneficiary as GORY and (ii) CHASE with the  
2 account beneficiary as EJOVI - which entities must have the Know Your Customer ("KYC") and  
3 due diligence documents to show from whom and for what reason the wire transfers were made  
4 and documents showing to whom/where monies were later transferred onward.

5 29. This evidence, information and documents will assist the South African Police  
6 Services – SAPS Sinoville Case # 347/01/2019 - investigators and prosecutor prove the fraud  
7 cases and ensure that all the persons / entities involved in and who / which benefitted from the  
8 fraudulent scheme are brought to justice.

9 30. The request is not overly broad or burdensome and is limited to information  
10 related to the transfers as set forth in ¶ 21 above, i.e. (i) the transfers made to HUNTINGTON  
11 with the account beneficiary as GORY and (ii) the transfers to CHASE with the account  
12 beneficiary as EJOVI.

13 31. South African Police Services Capt. Eric Chiloane confirmed in his March 1<sup>st</sup>  
14 Email that the evidence that should be forthcoming from this Application is welcome and will be  
15 helpful in the investigation and future prosecutions in SAPS Sinoville Case # 347/01/2019.

16 **EXHIBITS IN SUPPORT OF APPLICATION**

17 32. **Exhibit 1** - copies of the March 1 and 27, 2019 emails from South Africa Police  
18 Services – Serious Commercial Crimes Unit - Capt. Eric Chiloane - leading the South African  
19 Police Services Sinoville Case # 347/01/2019. In the March 1, 2019 Email, Capt. Chiloane  
20 confirms the existence of the complaint, investigation and future prosecutions; and that the South  
21 Africa Police will welcome evidence that can be secured through the US Courts and that  
22 evidence will be used in the future prosecutions. The March 27, 2019 Email confirms that the



1 South African Police are looking to bring Interpol into the case as it involved an international  
2 fraud and Cover Sheet of South African Case file.

3 33. **Exhibit 2** - copies of the emails from the FBI Special Agent Bradford leading the  
4 New Orleans Field Offices investigation. The other is being conducted by the Royal Canadian  
5 Mounted Police, the details of which Applicant is currently unaware.

6 34. **Exhibit 3** - copy of the Assignment of Russ Daneluk to Applicant.

7 35. **Exhibit 4** - shows some of the fake emails sent from domain – draftissue.com –  
8 pretending to be “Chase Bank” which is part of the South African Police Services Foreign  
9 Proceeding SAPS Sinoville Case # 347/01/2019 and is the subject of this Application.

10 36. **Exhibit 5** - shows some of the fake emails sent from domain – fddic.com –  
11 pretending to be the Federal Deposit Insurance Corporation which is part of the South African  
12 Police Services Foreign Proceeding SAPS Sinoville Case # 347/01/2019 and is the subject of this  
13 Application.

14 37. **Exhibit 6** - shows some of the wire transfers that were sent including (i) January  
15 3, 2018 transfer of \$15,000.00 to Account # XXXXXXXX9922 at HUNTINGTON with account  
16 beneficiary as GORY and (ii) February 9, 2017 of \$35,000.00, February 10, 2017 transfer of  
17 \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account # XXXXXXXX1725 at CHASE  
18 with account beneficiary as EJOVI.

19 **FACTS RELATED TO THE APPLICATION**

20 38. Applicant, his predecessors and partners are recognized by the South African  
21 Police Services – SAPS Sinoville Case # 347/01/2019 as victims of a Nigerian fraud.

22 39. The fraudulent scheme involved requests for monies made through emails sent to

1 and by a woman named “Kari Peters” (hereinafter “Peters”) who was allegedly an heir to  
2 inheritance assets that were held in Nigeria but which could be transferred to the United States.

3 40. Applicant, his predecessors and partners were told that (i) the Inheritance Monies  
4 and Assets to which Peters was allegedly entitled allegedly came from Peter’s father (Grant  
5 Peters) and Peters claimed the monies and assets were lawfully earned by her father as a result of  
6 his alleged contracting business(es) in Africa; (ii) Peters came to know a Canadian national –  
7 Paul Corkum (hereinafter “Paul”) - a paraplegic living in Ottawa Canada, who Peters allegedly  
8 met from her mother; and (iii) if Peters and Corkum were engaged to be married, Corkum would  
9 be assigned the rights to the Inheritance Monies and Assets allegedly due to Peters.

10 41. Peters and Corkum involvement in this matter began in 2016 and continues to the  
11 present.

12 42. Applicant, his predecessors and partners only became involved in 2017.

13 43. Prior to Applicant’s, his partners’ and predecessors’ involvement, Peters and  
14 Corkum got Corkum’s brother (Ken Corkum), his wife Kate O’Neill and their relatives to  
15 transfer monies in furtherance of the fraud.

16 44. The fraud was this: To get the alleged Inheritance Monies and Assets transferred  
17 into accounts that would be in their names, Peters and Corkum allegedly had to pay certain  
18 monies for fees, services, customs, duties and other charges.

19 45. Prior to approaching Applicant, his predecessors and partners, Peters, Corkum  
20 and Corkum’s relatives (Ken Corkum, Kate O’Neil and others) allegedly exhausted all their  
21 resources and allegedly did not have the necessary additional monies to complete the transfer.

22 46. In late December 2016 or early January 2017, Peters, Corkum and Ken Corkum

1 approached Applicant, his predecessors and partners to induce them to the possibility of  
2 acquiring the Inheritance Monies and Assets by providing additional assistance and monies.

3 47. Applicant, his predecessors and partners were offered rights and interests to the  
4 Inheritance Monies and Assets in exchange for which Applicant, his predecessors and partners  
5 would provide additional monies, resources and assistance to get the Inheritance Monies and  
6 Assets transferred into account(s) where they could be legally distributed to Peters, Corkum and  
7 Applicant, his predecessors and partners.

8 48. Using fake email addresses sent from fake domain names (masquerading as Chase  
9 Bank, Bank of America, Fidelity Bank, the Federal Deposit Insurance Corporation) including the  
10 domains and emails that are part of the South African criminal investigation and proceeding  
11 SAPS Sinoville Case # 347/01/2019, Applicant, his predecessors and partners were sent fake  
12 documents in which Peters purportedly transferred her interests in the Inheritance Monies and  
13 Assets to Corkum, who in turn transferred his interests to Applicant's partners / predecessors.

14 49. On their face, the documents presented to Applicant, his predecessors and  
15 partners appeared to be legitimate and there appeared to be no reason to doubt that the  
16 Inheritance Monies and Assets existed and could be legally transferred.

17 50. At all times, Applicant, his predecessors and partners believed that the Inheritance  
18 Monies and Assets existed, that the rights to the monies were legitimate and that they could  
19 lawfully acquire an interest in the monies and assets.

20 51. At all times, Applicant, his predecessors and partners were committed to the fact  
21 that before anyone was entitled to receive and take any of the Inheritance Monies and Assets that  
22 all taxes, customs duties, transfer fees and other government and regulatory compliance

1 requirements were met and that when the money was actually transferred, it would be clean and  
2 not the subject of any illegal or unlawful activity.

3 52. Applicant, his predecessors and partners considered this to be a lawful business  
4 investment to which they would contribute time, energy and monies in exchange for the return of  
5 the Inheritance Monies and Assets.

6 53. Peters and Corkum gave Applicant, his predecessors and partners documents and  
7 information that they claimed were given to them by persons / entities who were allegedly  
8 responsible for getting the Inheritance Monies and Assets released.

9 54. Unbeknownst to Applicant, his predecessors and partners, the persons / entities  
10 who allegedly gave the information to Peters and Corkum were behind, part of and benefitted  
11 from the Nigerian fraudulent scheme and that the documents and information give to Applicant,  
12 his predecessors and partners was intended to mislead Applicant, his predecessors and partners  
13 into believing that the alleged Inheritance Monies and Assets actually existed when they did not.

14 55. Further, the persons / entities sought to deceive Applicant, his predecessors and  
15 partners, into believing that if they paid the fees as per the instructions transferred through Peters  
16 and Corkum that the Inheritance Monies and Assets would actually be released.

17 56. Applicant, his predecessors and partners were told that what was needed to ensure  
18 the transfer of the inheritance monies was the payment of various fees, invoices, costs or other  
19 monies to persons and entities who had accounts at various banks in the United States.

20 57. Applicant, his predecessors and partners were presented with various documents  
21 all of which were transmitted by email or text messages and in which the domain names, email  
22 addresses and documents themselves appeared on their face to be authentic.

1           58.     The documents and information presented to Applicant, his predecessors and  
2 partners, were fakes and were part of a scheme designed and intended to trick Applicant, his  
3 predecessors and partners to transfer monies to accounts throughout the United States, which  
4 monies were then transferred onward to the persons / entities behind this Nigerian fraud or were  
5 used to pay invoices for services related to different parts of the Nigerian Fraud.

6           59.     As relates to this Application, Applicant, his predecessors and partners were  
7 directed to send the wire transfers as set forth in ¶ 21 above to (i) HUNTINGTON with GORY  
8 as the beneficiary or account holder and (ii) CHASE with EJOVI as the beneficiary or account  
9 holder.

10          60.     Using fake, forged and false documents, Applicant, his predecessors and partners  
11 were “tricked” into sending the wire transfers as set forth in ¶ 21 above to (i) HUNTINGTON  
12 with GORY as the beneficiary or account holder and (ii) CHASE with EJOVI as the beneficiary  
13 or account holder.

14          61.     Applicant, his predecessors and partners were told that the transfers as set forth in  
15 ¶ 21 above were to secure repatriation of the Inheritance Monies and Assets in which Applicant,  
16 his predecessors and partners acquired an interest.

17          62.     Applicant, his predecessors and partners were not told that any of the transfers  
18 they were instructed to send were to ship goods or pay for other transportation or travel or other  
19 costs to Nigeria or anywhere.

20          63.     This relief requested will help the South African Police Services – SAPS Sinoville  
21 Case # 347/01/2019 investigation and future prosecutions, as well as the FBI, the RCMP and  
22 other law enforcement agencies they will get involved, (i) prosecute the fraud; (ii) make their



1 cases against the persons / entities involved with the scheme; (iii) identify all the persons/entities  
2 involved with the fraud; (iv) shut down the fraud and (v) hold accountable all the persons and  
3 entities who are / were behind and /or benefitted from the scheme.

4 64. South African Police Services Capt. Eric Chiloane told Applicant that banks such  
5 as HUNTINGTON and CHASE to which monies were wired by Applicant, his predecessors and  
6 partners would have important and relevant information about the fraud and that information  
7 could be gleaned from knowing where the monies were transferred (if they were transferred  
8 onward) out of the original accounts.

9 65. The identity of some of the persons / entities involved with the scheme have been  
10 discovered. These persons / entities who / which are currently under investigation by South  
11 African Police SAPS Sinoville Case # 347/01/2017 and others are under investigation by the FBI  
12 New Orleans Field Office.

13 66. Applicant, his predecessors and partners have no available recourse and no ability  
14 on their own to secure the evidence related the transfers referred to above in ¶¶ 12 & 13,  
15 specifically (i) the three transfers to HUNTINGTON with GORY as the beneficiary or account  
16 holder and (ii) the three CHASE with EJOVI as the beneficiary or account holder that  
17 Applicant's partners and predecessors were tricked into wiring.

18 **WITNESSES AND EVIDENCE IN WITNESSES POSSESSION**

19 67. Witness HUNTINGTON NATIONAL BANK maintains multiple branches within  
20 this District including one known as "Public Square Branch", 200 Public Square, Cleveland OH

1 44114, within this District.<sup>6</sup>

2 68. Witness DAVID GORY resides at 2243 Chester Avenue, Apt. 4402, Cleveland,  
3 OH 44114

4 69. Witness JP MORGAN CHASE BANK, maintains multiple branches within this  
5 District, including at 8231 Columbia Rd., Olmsted Falls, OH 44138, all within this District.<sup>7</sup>

6 70. Witness JOHNBULL EJOVI maintains a residence at 9397 Wheaton Court,  
7 Olmsted Falls, OH, within this District.

8 71. Account # XXXXXXXX9922 is maintained at HUNTINGTON and the account  
9 holder is GORY.

10 72. Account # XXXXXXXX1725 is maintained at CHASE and the account holder is  
11 EJOVI.

12 73. As referred to in ¶ 21 above, Applicant's predecessors and partners sent the  
13 following wire transfers, (i) January 3, 2018 transfer of \$15,000.00 to Account #  
14 XXXXXXXX9922 at HUNTINGTON with account beneficiary as GORY and (ii) February 9,  
15 2017 transfer of \$35,000.00, February 10, 2017 transfer of \$37,000.00 and March 2, 2017  
16 transfer of \$15,000.00 to Account # XXXXXXXX1725 at CHASE with account beneficiary as  
17 EJOVI.

18 74. This application seeks ONLY information that is relevant to the South African

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[https://www.google.com/search?rlz=1C1CHBF\\_enUS840US840&ei=o0ncXPjxELHl\\_Qb9mIGgDA&q=huntington+national+bank+cleveland+ohio+44114&oq=huntington+national+bank+cleveland+ohio+44114&gs\\_l=psy-ab.3..33i299j2.223j2.24896..26517...0.0..0.152.687.2j4.....0....1..gws-wiz.....0i7lj0i22i30j33i22i29i30j33i160.pjfHyZVO4Bk](https://www.google.com/search?rlz=1C1CHBF_enUS840US840&ei=o0ncXPjxELHl_Qb9mIGgDA&q=huntington+national+bank+cleveland+ohio+44114&oq=huntington+national+bank+cleveland+ohio+44114&gs_l=psy-ab.3..33i299j2.223j2.24896..26517...0.0..0.152.687.2j4.....0....1..gws-wiz.....0i7lj0i22i30j33i22i29i30j33i160.pjfHyZVO4Bk)

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<https://www.yellowpages.com/parma-heights-oh/jpmorgan-chase-bank-locations>.

1 Police Services – SAPS Sinoville Case # 347/01/2019 and states as to each witness that:

2 a. HUNTINGTON and CHASE should have information related to the  
3 transfers referred to above in ¶ 21, that would show (i) what due diligence and Know  
4 Your Client (KYC) information the bank received from its account holder to support the  
5 transfers of monies; (ii) what invoices were presented to the bank by the account holder  
6 showing the reason the monies were being transferred into its account; and (iii) where  
7 monies, if any, were transferred onward out of the original accounts; and

8 b. EJOVI and GORY should have information related to the transfers  
9 referred to above in ¶ 21, including but not limited to (i) instructions and who gave them  
10 about why EJOVI and GORY were to receive the wire transfers; and (ii) where and to  
11 whom monies were to be transferred onward after they were received in the accounts at  
12 HUNTINGTON and CHASE.

13 75. The evidence to be produced and the testimony that will be elicited is for use in  
14 the Nigerian fraud investigations being conducted by South African Police Services – SAPS  
15 Sinoville Case # 347/01/2019 – in which Applicant is a party. It may also be used in the FBI  
16 Field Office in New Orleans and the RCMP's investigation in which Applicant has an interest.

17 76. Application is not seeking to circumvent evidence gathering laws or procedures in  
18 South Africa as the witness banks and witness account holders cannot be compelled by the South  
19 African investigating authorities to produce the evidence sought. And, in that regard, the South  
20 African authorities have confirmed that they welcome the evidence that Applicant is attempting  
21 to gather in the US Courts and that evidence will be used in their investigation and future  
22 prosecutions. **See Exhibit 1** - March 1, 2019 Email from Capt. Chiloane.

1           77.     This Application also does not seek to circumvent evidence gathering laws or  
2 procedures in the United States or Canada both of which regularly accept evidence gathered  
3 pursuant to 28 USC § 1782.

4           78.     This application is the only way to obtain the evidence from the witness banks  
5 and witness account holders needed to present to the South African authorities and investigators  
6 who are attempting to shut down this internet fraud and scheme and to hold accountable those  
7 persons / entities within their jurisdiction for their wrongful acts against innocent persons.

8           79.     Granting of the relief sought presents no hardship or burden to the (i)  
9 HUNTINGTON with GORY as the beneficiary or account holder related to the January 3, 2018  
10 transfer of \$15,000.00 to Account # XXXXXXXX9922 and (ii) CHASE with EJOVI as the  
11 beneficiary or account holder related to the February 9, 2017 transfer of \$35,000.00, February  
12 10, 2017 transfer of \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account #  
13 XXXXXX1725, because the evidence is in their possession in this district and to the extent any  
14 of the evidence is electronically stored, it can / should easily be produced from (i)  
15 HUNTINGTON with GORY as the beneficiary or account holder and (ii) CHASE with EJOVI  
16 as the beneficiary or account holder, servers, computer stored files and databases in this district.

17           80.     Granting this application is consistent with the principles of 28 U.S.C. § 1782 and  
18 Fed R. Civ. P Rule 26.<sup>8</sup>

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<sup>8</sup>       28 U.S.C. § 1782 provides that testimony shall be taken and documents / things produced in accordance with the Federal Rules of Civil Procedure). Fed. R. Civ. P. 26(d) provides that a district court may authorize early discovery for the parties' and witnesses' convenience and in the interests of justice. *See, e.g., IO Group, Inc. v. Does 1-65*, 2010 WL 4055667, at \*2 (N.D. Cal. 2010); *Solarbridge Tech. v. John Doe*, 2010 WL 3419189 (N.D. Cal. 2010) (applicant should be given opportunity through discovery to identify unknown persons/entities) (citing *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-77 (N.D. Cal. 2002) and *Columbia Ins. Co. v. Seescandy.com*, 185 F.R.D. 573, 578-80 (N.D. Cal. 1999) (factors to be considered when

**WITNESSES NOT PARTIES TO FOREIGN PROCEEDING / INVESTIGATION**

81. Witnesses (i) HUNTINGTON and GORY and (ii) CHASE and EJOVI are not parties, nor are they in privy, with any other party in South African Police Services – SAPS Sinoville Case # 347/01/2019.

**THE APPLICATION IS CONSISTENT WITH SUPREME COURT PRINCIPLES**

82. The application is consistent with the principles and standards set forth in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004); *Consortio Ecuatoriano de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, No. 11-12879, 2012 WL 2369166 (11th Cir. June 25, 2012); see *In re Clerici*, 481 F.3d 1324, 1331 (11th Cir. 2007); *United Kingdom v. United States*, 238 F.3d 1312, 1319 (11th Cir. 2001); *Kulzer v. Esschem. Inc.*, 390 Fed. Appx. 88, 91 (3d Cir. 2010); The Ninth Circuit has held that applications for subpoenas pursuant to § 1782 may be filed *ex parte* because “[t]he witnesses can . . . raise objections and exercise their due process rights by motions to quash the subpoenas.” *In re Letters Rogatory from Tokyo Dist., Tokyo, Japan*, 539 F.2d 1216, 1219 (9th Cir. 1976).

83. Further, as reflected by the language of § 1782, its purpose is to provide federal court assistance in gathering evidence for use in a foreign tribunal. See *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004); and *Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84 (2d Cir. 2004) (§ 1782 has “twin aims,” i.e., “providing efficient means of establishing good cause to learn the identity of an unknown entity through early discovery).



1 assistance to participants in international litigation in our federal courts and encouraging foreign  
2 countries by example to provide similar means of assistance to our courts”) (internal quotation  
3 marks omitted).

4  
5 **EVIDENCE SOUGHT IS SPECIFIC & RELEVANT TO SOUTH AFRICAN**  
6 **POLICE SERVICES – SAPS SINOVILLE CASE # 347/01/2019**  
7

8 84. This Petition seeks only specific information, also explained above that is relevant  
9 to the South African Police Services – SAPS Sinoville Case # 347/01/2019 investigation and  
10 future prosecutions and to show how the transfers referred to above in ¶ 21, specifically (i) the  
11 January 3, 2018 transfer of \$15,000.00 to Account # XXXXXXXX9922 at HUNTINGTON with  
12 GORY as beneficiary or account holder and (ii) the February 9, 2017 transfer of \$35,000.00,  
13 February 10, 2017 transfer of \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account #  
14 XXXXXX1725 at CHASE with EJOVI as the beneficiary or account holder, were part of the  
15 overall fraud that was run in part with the help of the South African domains through / from  
16 which false and fake documents were sent to Applicant, his predecessors and partners and  
17 specifically:

18 a. the evidence from HUNTINGTON and CHASE will show (i) what due diligence  
19 and Know Your Client (KYC) information which had to be given to (i) HUNTINGTON with  
20 GORY as the beneficiary or account holder and (ii) CHASE with EJOVI as the beneficiary or  
21 account holder HUNTINGTON by the person / entity that was responsible for directing that  
22 Applicant’s partners and predecessors make the transfers referred to above in ¶ 21; and

23 b. EJOVI and GORY should have information related their accounts at  
24 HUNTINGTON and CHASE, respectively, to support the transfers referred to above in ¶ 21

1 including but not limited to (i) instructions and who gave them about why the wire transfers were  
2 sent; and (ii) where and to whom monies were to be transferred onward.

3 85. This evidence will assist in South African Police Services – SAPS Sinoville Case  
4 # 347/01/2019 investigation and future prosecutions against the person who ran the fake domain  
5 in South Africa from which documents and instructions were sent to Applicant, his predecessors  
6 and partners, to ensure that the fraud was shut down and with which the South African Police  
7 Services – SAPS Case # 347/01/2019 investigators and prosecutors can connect the transfers  
8 referred to above in ¶ 21 and which will show the persons and entities who organized, were  
9 behind and who benefitted from fraudulent scheme against Applicant, his predecessors and  
10 partners were brought to justice.

11 86. This application seeks ONLY information directly related to how it came to be  
12 that the transfers referred to above in ¶ 21, (i) were made to HUNTINGTON with GORY as the  
13 beneficiary or account holder; (ii) were made to CHASE with EJOVI as the beneficiary or  
14 account holder; (ii) how it came to be that the monies which Applicant, his predecessors and  
15 partners were told were being sent to HUNTINGTON with GORY as the beneficiary or account  
16 holder and CHASE with EJOVI as the beneficiary or account holder were to secure the  
17 repatriation of the Inheritance Monies and Assets, instead came to be used for other purposes;  
18 and (iii) where and to whom monies, if any, may have been out or were sent to persons / entities  
19 who was part of or benefited from the fraud against Applicant his partners and predecessors.

20 87. The requested information as limited to the transfers referred to above in ¶ 21,  
21 specifically (i) the transfer to HUNTINGTON with GORY as the beneficiary or account holder  
22 and (ii) the transfers to CHASE with EJOVI as the beneficiary or account holder will help in the

1 criminal investigation presently being conducted by the South African Police Services – SAPS  
2 Sinoville Case # 347/01/2019. This information will also help the investigations being  
3 conducted by the FBI Field Office in New Orleans and the RCMP in Canada.

4 88. The evidence to be produced and the testimony that will be elicited is for use in  
5 the foreign investigation and future prosecutions related to this Nigerian fraud that are being  
6 conducted by and part of the South African Police Services – SAPS Sinoville Case #  
7 347/01/2019 in which Applicant is a party.<sup>9</sup>

8 **PETITION IS MADE IN COMPLIANCE WITH 28 USC § 1782 REQUIREMENTS,**  
9 **CIRCUIT PRECEDENT & SHOULD BE GRANTED**

10  
11 **The Requirements of Section 1782 and Subpoenas Have Been Met**  
12

13 89. 28 U.S.C. § 1782(a), which provides: *The district court of the district in which a*  
14 *person resides or is found may order him to give his testimony or statement or to produce a*  
15 *document or other thing for use in a proceeding in a foreign or international tribunal, including*  
16 *criminal investigations conducted before formal accusation. The order may be made pursuant*  
17 *to a letter rogatory issued, or request made, by a foreign or international tribunal or upon the*  
18 *application of any interested person and may direct that testimony or statement be given, or the*  
19 *document or other thing be produced, before a person appointed by the court. By virtue of his*  
20 *appointment, the person appointed has power to administer any necessary oath and take the*  
21 *testimony or statement. The order may prescribe the practice and procedure, which may be in*  
22 *whole or part the practice and procedure of the foreign country or the international tribunal, for*  
23 *taking the testimony or statement or producing the document or other thing. To the extent that*

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<sup>9</sup> To the extent that the evidence has not already been provided to the FBI and the RCMP by Santa Clara Sheriff's Det. Cogliandro for use in their investigations and future prosecutions, it will be provided to them by Applicant.

1 *the order does not prescribe otherwise, the testimony or statement shall be taken, and the*  
 2 *document or other thing produced, in accordance with the Federal Rules of Civil Procedure.*

3 90. Since 1948, “Congress [has] substantially broadened the scope of assistance  
 4 federal courts could provide for foreign proceedings,” per § 1782. *Intel*, 542 U.S. at 247-48.

5 91. The use of *ex parte* applications is widespread and, in many cases, unremarked  
 6 upon (and thus approved of *sub silentio*). See, e.g., *In re Request from UK Pursuant to Treaty*  
 7 *Between Gov’t of U.S. & Gov’t of UK on Mut. Assistance in Criminal Matters in the Matter of*  
 8 *Dolours Price*, 685 F.3d 1, 6 (1st Cir. 2012), *cert. denied*, 133 S. Ct. 1796 (2013); *Brandi-Dohrn*  
 9 *v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 78 (2d Cir. 2012); *In re Consorcio Ecuatoriano*  
 10 *de Telecomunicaciones S.A. v. JAS Forwarding (USA), Inc.*, 685 F.3d 987, 992 (11th Cir.  
 11 2012); *In re Clerici*, 481 F.3d 1324, 1329 (11th Cir. 2007).

12 92. “The history of § 1782 reveals Congress’ wish to strengthen the power of district  
 13 courts to respond to requests for international assistance.” *Lo Ka Chun v. Lo To*, 858 F.2d 1564,  
 14 1565 (11th Cir. 1988).

15 93. Congress has granted the district courts broad discretion in granting judicial  
 16 assistance under § 1782. *In re Application of Consorcio Ecuatoriano de Telecomunicaciones*  
 17 *S.A.*, 2012 WL 2369166, at \*21 (11th Cir. 2012); *In re Clerici*, 481 F.3d 1324, 1331 (11th Cir.  
 18 2007); *United Kingdom v. United States*, 238 F.3d 1312, 1319 (11th Cir. 2001).

19 94. The district court has authority to grant § 1782 application for judicial assistance  
 20 if the following statutory requirements are met: (1) request must be made “by a foreign or  
 21 international tribunal,” or by “any interested person”; (2) request must seek evidence, whether it  
 22 be the “testimony or statement” of a person or the production of “a document or other thing”; (3)

1 evidence must be “for use in a proceeding in a foreign or international tribunal”; and (4)  
2 person/entity from whom/which discovery is sought must reside and be found in the district of  
3 the district court ruling on the application for assistance. 28 U.S.C. § 1782(a); *In re Clerici*, 481  
4 *F.3d at 1332*, and *In re Chevron Corp.*, 2010 U.S. Dist. LEXIS 47034, at \*15.

5 95. Once the statutory requirements have been satisfied, the district court should  
6 consider the following factors in deciding whether to exercise the discretion granted under §  
7 1782: (1) whether “the person from whom discovery sought is a participant in the foreign  
8 proceeding,” because “the need for § 1782(a) aid generally is not as apparent as it ordinarily is  
9 when evidence is sought from a nonparticipant”; (2) “the nature of the foreign tribunal, the  
10 character of the proceedings underway abroad, and the receptivity of the foreign government or  
11 the court or agency abroad to U.S. federal court judicial assistance”; (3) “whether the § 1782(a)  
12 request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of  
13 a foreign country or the United States”; and (4) whether the request is otherwise “unduly  
14 intrusive or burdensome.” *In re Clerici*, 481 *F.3d at 1334* (quoting *Intel*, 542 U.S. at 264-65).

15 96. The Supreme Court has held that § 1782 does not contain a “foreign-  
16 discoverability requirement” – i.e., there is no requirement that the information sought be  
17 discoverable under the law governing the foreign proceeding. *Intel*, 542 U.S. at 253. The Court  
18 has further held that there is no requirement that a § 1782 applicant show “United States law  
19 would allow discovery in domestic litigation analogous to the foreign proceeding.” *Id.* at 263.

20 97. Section 1782(a) further “directs judges to provide discovery assistance pursuant to  
21 the Federal Rules of Civil Procedure,” *Weber v. Finker*, 554 *F.3d 1379*, 1383 (11<sup>th</sup> Cir. 2009), so  
22 long as the order does not prescribe the practice and procedure of the foreign country or the



1 international tribunal.

2 98. Section 1782 (a) can also be used to discover the identity of individuals behind  
3 emails, domains and internet activity – which was how Applicant, his predecessors and partners  
4 were instructed to make the transfers referred to above in ¶ 21, specifically (i) the wire transfers  
5 to HUNTINGTON with GORY as the beneficiary or account holder and (ii) the wire transfers to  
6 CHASE with EJOVI as the beneficiary or account holder - so that information can be provided to  
7 foreign courts and investigating authorities. *See In re Application for Appointment of a*  
8 *Commissioner re Request for Judicial Assistance for the Issuance of Subpoena Pursuant to 28*  
9 *U.S.C. § 1782, No. C 11-80136 RS (MEJ), 2011 WL 2747302 (N.D. Cal. July 13, 2011).*

10 **Applicant Has Met the § 1782(a) Statutory Requirements**

11 99. The complaints pending and ongoing investigations by the South African Police  
12 Services in SAPS Sinoville Case # 347/01/2019 is a foreign proceeding. *See 28 U.S.C. § 1782(a)*  
13 *and In re Letters of Request to Examine Witnesses, 59 F.R.D. 625, 629 (N.D. Cal. 1973)*  
14 (“crucial requirement is that the foreign body exercise adjudicative power and have an  
15 adjudicative purpose”).

16 100. Applicant is the complainant and a party to the foreign proceeding. *See 28 U.S.C.*  
17 *§ 1782(a) and Intel, 542 U.S. at 256* (stating that an interested person under § 1782 “plainly  
18 reaches beyond the universe of persons designated ‘litigant,’” although there is “[n]o doubt [that]  
19 litigants are included among and may be the most common example”).

20 101. Applicant seeks only limited evidence in the form of witness testimony and  
21 production of documents relevant to the transfers referred to above in ¶ 21, specifically (i) the  
22 transfers to HUNTINGTON with GORY as the beneficiary or account holder and (ii) the

1 transfers to CHASE with EJOVI as the beneficiary or account holder as described above.

2 102. As to HUNTINGTON and GORY, the discovery request is tailored to specific  
3 transfers referred to above in ¶ 21, specifically (i) the January 3, 2018 transfer of \$15,000.00 to  
4 Account # XXXXXXXX9922 at HUNTINGTON with account beneficiary as GORY and (ii) the  
5 February 9, 2017 transfer of \$35,000.00, February 10, 2017 transfer of \$37,000.00 and March 2,  
6 2017 transfer of \$15,000.00 to Account # XXXXXXXX1725 at CHASE with account beneficiary as  
7 EJOVI.

8 103. As to CHASE and EJOVI, the discovery request is tailored to the transfers  
9 referred to above in ¶ 21, specifically (i) the January 3, 2018 transfer of \$15,000.00 to Account #  
10 XXXXXXXX9922 at HUNTINGTON with account beneficiary as GORY and (ii) the February 9,  
11 2017 transfer of \$35,000.00, February 10, 2017 transfer of \$37,000.00 and March 2, 2017  
12 transfer of \$15,000.00 to Account # XXXXXXXX1725 at CHASE with account beneficiary as  
13 EJOVI.

14 104. The discovery request is also tailored to the transfers referred to above in ¶ 21,  
15 specifically (i) the January 3, 2018 transfer of \$15,000.00 to Account # XXXXXXXX9922 at  
16 HUNTINGTON with account beneficiary as GORY and (ii) the February 9, 2017 transfer of  
17 \$35,000.00, February 10, 2017 transfer of \$37,000.00 and March 2, 2017 transfer of \$15,000.00  
18 to Account # XXXXXXXX1725 at CHASE with account beneficiary as EJOVI, including but not  
19 limited to (i) instructions and who gave the instructions that the monies were to be wired into the  
20 above accounts and (ii) why it was that monies were being wired paid by a third party – to wit:  
21 Applicant, his predecessors and partners.

22 105. The evidence to be produced and the testimony that will be elicited is for use in

1 the South African foreign proceeding South African Police Services – SAPS Sinoville Case #  
2 347/01/2019 in which Applicant is a party.

3 106. The evidence to be produced will assist the South African Police Services – SAPS  
4 Sinoville Case # 347/01/2019 investigators understand how the above transfers referred to in ¶  
5 21 and the fake emails and fake domains and fake documents were part and parcel of the entire  
6 fraud, so that the South African authorities could take the necessary actions to stop this ongoing  
7 fraudulent scheme and prosecute the persons involved and who / which benefited from this  
8 Nigerian Fraud and scheme.

9 107. The discovery and evidence sought is from (i) HUNTINGTON and its account  
10 holder GORY and (ii) CHASE and its account holder EJOVI, each of which are located and can  
11 be found in the district of the district court ruling on the application for assistance. *See 28 U.S.C.*  
12 *§ 1782(a).*

13 **Discretionary Factors Favor Granting Applicant's § 1782 Application**

14 **Witnesses are Outside Jurisdictional Reach of South African Authorities**

15 108. HUNTINGTON and its account holder GORY, and CHASE and its account  
16 holder EJOVI are not the subjects of the criminal investigations pending in South Africa Police  
17 Services – SAPS Sinoville Case # 347/01/2019.<sup>10</sup>

18 109. The Supreme Court held that since “nonparticipants in the foreign proceeding  
19 may be outside the foreign tribunal’s jurisdictional reach ..., their evidence, available in the  
20 United States, may be unobtainable absent § 1782(a) aid.” *Intel*, 542 U.S. at 264.

21 110. A foreign tribunal has jurisdiction over those appearing before it and can itself

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<sup>10</sup> Applicant is also informed that HUNTINGTON and ZHEJIANG are also not the targets of the FBI or the RCMP investigations.

1 order them to produce evidence. In contrast, nonparticipants in the foreign proceeding may be  
 2 outside the foreign tribunal's jurisdictional reach; hence, their evidence, available in the United  
 3 States, may be unobtainable absent § 1782(a) aid. *Id. at 264.*

4 111. As such, the relevant evidence, documents and information in (i)  
 5 HUNTINGTON's and its account holder GORY's and (ii) CHASE's and its account holder  
 6 EJOVI' possession, custody and control are not in the possession of the foreign tribunal and  
 7 would be accessible without judicial assistance in this jurisdiction. *See In re Chevron Corp.,*  
 8 *2010 U.S. Dist. LEXIS 47034, at \*20* (noting that Ecuadorian court and tribunal lacked  
 9 jurisdiction to compel the individual, who was located in the district and not a party to the  
 10 foreign proceedings, to produce the material sought) and *In re Microsoft Corp., 428 F. Supp. 2d*  
 11 *188, 194 (S.D.N.Y. 2006) (finding section 1782 assistance unnecessary and improper where the*  
 12 *discovery requested was already in the foreign tribunal's possession).*

### 13 **Nature and Receptivity of South African Authorities & Tribunals**

14 112. Section 1782 (a) specifically provides "*The district court of the district in which a*  
 15 *person resides or is found may order him to give his testimony or statement or to produce a*  
 16 *document or other thing for use in a proceeding in a foreign or international tribunal, including*  
 17 *criminal investigations conducted before formal accusation . . . .* "

18 113. § 1782 also authorizes and encourages judicial assistance even as to foreign  
 19 proceedings that have not yet commenced or advanced. *See In re: Clerici at 1333 n. 12 (citing*  
 20 *Intel, 542 U.S. at 248-49).*

21 114. § 1782(a) contains no threshold requirement that evidence sought from a federal  
 22 district court would be discoverable under the law governing the foreign proceeding. *See Intel,*

1 543 U.S. at 247; see also *In re Clerici*, 481 F.3d at 1333 n.12.

2 115. Applicants need not meet a foreign discovery requirement prior to being entitled  
3 to assistance under § 1782. See *In re Application of Winning*, 2010 WL 1796579 at \*10, n.7.

4 116. However, to the extent the Court wishes to enquire about this, the March 1, 2019  
5 email from South African Police Services Capt. Chiloane confirms that whatever evidence he is  
6 able to secure from procedures in the United States will be welcomed in the investigation and  
7 future prosecution of SAPS Sinoville Case # 347/01/2019. **See Exhibit 1.**

8 **This Application is NOT a Fishing Expedition**

9 117. Federal Courts must guard against the use of § 1782 Requests to investigate  
10 whether litigation is possible before launching a claim as well as attempts to collect evidence for  
11 the purpose of “developing” evidence for some future criminal or civil case. See *In re Sargeant*,  
12 278 F. Supp. 3d 814 (SDNY 2017).

13 118. This Application is not a fishing expedition. It is not being used to investigate  
14 whether a future claim can be made or to collect evidence for the purpose of developing / using it  
15 for some future criminal or civil case. See *In re: Sargeant, supra*.

16 119. The evidence sought in this Application is for use in the South African Police  
17 Services – SAPS Sinoville Case # 347/01/2019 in which Applicant is the complaining witness  
18 and which evidence will allow the South African investigators and prosecutors to have the  
19 evidence to show the connection between that portion of the fraud run out of South Africa and (i)  
20 the transfers referred to above in ¶ 21, specifically (i) the January 3, 2018 transfer of \$15,000.00  
21 to Account # XXXXXXXX9922 at HUNTINGTON with account beneficiary as GORY and (ii)  
22 the February 9, 2017 transfer of \$35,000.00, February 10, 2017 transfer of \$37,000.00 and

1 March 2, 2017 transfer of \$15,000.00 to Account # XXXXXX1725 at CHASE with account  
2 beneficiary as EJOVI. The evidence may also be used in the ongoing investigation by the FBI  
3 New Orleans Field office and the RCMP investigation in which Applicant has an interest.

4 120. The South African Police Services – SAPS Sinoville Case # 347/01/2019  
5 investigation exists and are ongoing. The FBI and RCMP investigations exist and are ongoing.  
6 And, the Santa Clara County Sheriff's Department investigation that made the connection  
7 between the broader Nigerian fraud against Applicant, his predecessors and partners to the part  
8 of the fraud that tricked Applicant, his predecessors and partners to transfer monies to (i)  
9 HUNTINGTON with GORY as the beneficiary or account holder and (ii) CHASE with EJOVI  
10 as the beneficiary or account holder to pay for EJOVI's shipment of and transportation costs to  
11 Nigeria.

12 121. This § 1782 Application requests evidence that the law enforcement officials with  
13 whom Applicant has been dealing have informed him the evidence as identified above must be in  
14 the possession of (i) HUNTINGTON and its account holder GORY and (ii) CHASE and its  
15 account holder EJOVI.

16 **Applicant Is Not Attempting to Circumvent**  
17 **South African Proof Gathering Restrictions and Policies**  
18

19 122. Applicant is not attempting to circumvent foreign proof-gathering mechanisms in  
20 its efforts to secure this evidence but is attempting to gather evidence that is not otherwise  
21 accessible to the foreign investigators and prosecutors and which (i) will help in the  
22 investigation and future prosecution of South African Police Services – SAPS Sinoville Case #  
23 347/01/2019; (ii) will help identify the roles that each person/entities (presently known and as yet  
24 to be discovered) played in behind the Nigerian fraud that was perpetrated against Applicant, his

1 predecessors and partners. Applicant does not have to prove receptivity to show they are not  
 2 attempting to circumvent foreign proof-gathering mechanisms. *See, e.g., In re Chevron*, 762 F.  
 3 *Supp. 2d* 242, 252 (D. Mass. 2010).

4 123. Applicants' request for judicial assistance in order to obtain the evidence from (i)  
 5 HUNTINGTON and its account holder GORY and (ii) CHASE and its account holder EJOVI  
 6 will help in the existing investigations and future prosecutions in South African Police Services –  
 7 SAPS Sinoville Case # 347/01/2019 and will help the investigators and prosecutors show how  
 8 the Nigerian fraud against Applicant, his predecessors and partners was perpetrated, that the  
 9 monies wired by Applicant's partners and predecessors was not used to secure the repatriation of  
 10 the alleged Inheritance Monies and Assets and the role played by each person/entity involved  
 11 with and benefitted from the fraud were inter-related and part of the entire fraud

12 124. Applicant, his predecessors and partners and Applicant is not attempting to  
 13 circumvent the foreign investigating authorities in South Africa's discovery methods and  
 14 restrictions. *See In re Application of Winning*, 2010 WL 1796579 at \*10.

#### 15 **Application Not Unduly Burdensome or Intrusive**

16 125. The requests made by Applicant are narrowly tailored to documents, evidence and  
 17 information that are directly related to the transfers referred to above in ¶ 21, specifically (i) the  
 18 January 3, 2018 transfer of \$15,000.00 to Account # XXXXXXXX9922 at HUNTINGTON with  
 19 account beneficiary as GORY and (ii) the February 9, 2017 transfer of \$35,000.00, February 10,  
 20 2017 transfer of \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account #  
 21 XXXXXXXX1725 at CHASE with account beneficiary as EJOVI and the documents, evidence and  
 22 information are / should be in the possession, custody and control of the (i) HUNTINGTON and



1 GORY and (ii) CHASE and EJOVI. As such, the request is not overbroad nor burdensome. *See*  
 2 *In re Consorcio Ecuatoriano*, 2012 WL 2369166, at \*20 n.7 and *Intel*, 542 U.S. at 265.

3 126. The evidence requested is “relevant to the foreign proceeding”, to wit: the  
 4 criminal investigation by South African Police Services – SAPS Sinoville Case # 347/01/2019.  
 5 *See In re Dr. Braga*, 789 F. Supp. 2d at 1304; compare *In re Consorcio Ecuatoriano*, 2012 WL  
 6 2369166 at \*24 (holding that the discovery is plainly relevant to the foreign proceedings where  
 7 they formed the basis for the defenses in those proceedings), *Kang v. Noro- Moseley Partners*,  
 8 246 Fed. App’x. 662, 664 (11th Cir. 2007) (denial only due to “irrelevance of requested  
 9 discovery to the nature of the foreign proceedings”).

10 127. HUNTINGTON and GORY and CHASE and EJOVI are not participants in or  
 11 subject to the jurisdiction of the South African investigating authorities, it is uncertain that the  
 12 evidence, documents and information they possess can be accessed without the granting of this  
 13 request, as such are “outside the foreign tribunal’s jurisdictional reach.” *See Intel*, 542 U.S. at  
 14 244.

15 128. The documents in HUNTINGTON’s and GORY’s and CHASE’s and EJOVI’  
 16 possession, custody and control are relevant and have evidentiary value to the South African  
 17 Police Services – SAPS Sinoville Case # 347/01/2017 and providing the requested evidence does  
 18 not subject HUNTINGTON or EJOVI to undue burden. *See Fed. R. Civ. P. 45(c)(3)(iv)*, *Int’l*  
 19 *Ass’n of Machinists and Aerospace Workers v. P&B Transp.*, 2007 WL 4145974, at \*2 (M.D.  
 20 Fla. 2007); *Fadalla v. Life Automotive Products, Inc.*, 258 F.R.D. 501, 504 (M.D. Fla. 2007)  
 21 (citing *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004).

22 129. The discovery requests are limited to very specific activity in and through (i) the

transfers to HUNTINGTON with GORY as its account holder and (ii) the three transfers to CHASE with EJOVI as its account holder and as such they are sufficiently tailored so that they are directly relate to the South African Police Services – SAPS Sinoville Case # 347/01/2019 investigation and future prosecutions and will assist in the future investigation and prosecutions of persons / entities involved with and who/which benefitted from the Nigerian fraud against Applicant, his predecessors and partners. *See In re Consorcio Ecuatoriano*, 2012 WL 2369166 at \*25 (holding that discovery was appropriately tailored as it “limit[ed] the request to information” within a six year time period relating to one specific contract and the deposition of a person most knowledgeable), with *Advanced Micro Devices, Inc. v. Intel Corp.*, 2004 U.S. Dist. LEXIS 21437 (on remand from the Supreme Court, the district court found the 1782 application to be “unduly intrusive and burdensome [since there was] . . . no attempt to tailor its application to the subject matter of the EC Complaint”).

### **Applicant’s Requests Satisfies Fed. R. Civ. P. Rules 26 & 45 Requirements**

#### **FRCP Rule 26**

130. Discovery under § 1782 is guided by the applicable standards found in the Federal Rules of Civil Procedure. *See 28 U.S.C. § 1782* (providing that, “[t]o the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure).

131. A court may authorize early discovery for the parties’ and witnesses’ convenience and in the interests of justice. Fed. R. Civ. P. 26(d). Courts in this district generally consider whether a plaintiff has shown “good cause” for the early discovery. *See, e.g., IO Group, Inc. v. Does 1-65*, 2010 WL 4055667, at \*2 (N.D. Cal. 2010); *Solarbridge Tech. v. John Doe*, 2010 WL

1 3419189 (N.D. Cal. 2010); *Semitool, Inc. v. Tokyo Electron America, Inc.*, 208 F.R.D. 273, 275-  
2 77 (N.D. Cal. 2002).

3 132. To the extent that some of the evidence to be provided by HUNTINGTON and  
4 GORY and CHASE and EJOVI identifies a person/ entity whose involvement in the fraud  
5 against Applicant, his predecessors and partners is not currently known, Applicant should be  
6 given an opportunity through discovery to identify these unknown persons/entities, unless it is  
7 clear that discovery would not uncover the identities, or no valid claim could be made against  
8 them. *See Solarbridge*, 2010 WL 3419189, at \*1 and *Gillespie v. Civiletti*, 629 F.2d 637 (9th Cir.  
9 1980)).

10 133. The evidence for which § 1782 Relief is sought by Applicant is in the possession,  
11 custody and control of HUNTINGTON and GORY and CHASE and EJOVI is limited to  
12 evidence, documents and information related to the transfers referred to above in ¶ 21 that will  
13 assist in the ongoing investigations and future prosecutions of the persons and entities behind the  
14 internet fraud against Applicant, his predecessors and partners and will assist the foreign  
15 investigating authorities show the interaction between the broader internet fraud being run in part  
16 out of South Africa and the portion of the fraud that tricked Applicant, his predecessors and  
17 partners to make the transfers referred to above in ¶ 21, specifically (i) the January 3, 2018  
18 transfer of \$15,000.00 to Account # XXXXXXXX9922 at HUNTINGTON with account  
19 beneficiary as GORY and (ii) the February 9, 2017 transfer of \$35,000.00, February 10, 2017  
20 transfer of \$37,000.00 and March 2, 2017 transfer of \$15,000.00 to Account # XXXXXXXX1725 at  
21 CHASE with account beneficiary as EJOVI, were NOT used to help secure the repatriation of  
22 the Inheritance Monies and Assets as Applicant, his predecessors and partners were lead to

1 believe but were to pay for the shipment of goods to or the payment of other costs related to  
2 Nigeria.). As such, the request does not violate the requirements of Fed. R. Civ. P. Rule 26.

3 **FRCP Rule 45**

4 134. Under FRCP Rule 45(a)(1)(C) a subpoena may command a nonparty served to  
5 produce documents that are in its “possession, custody, or control.”

6 135. “Control is defined not only as possession, but as the legal right to obtain the  
7 documents requested upon demand.” *Searock v. Stripling*, 736 F.2d 650, 653 (2d Cir.  
8 1984). “Control” may also be found where an entity has “access to” and the “ability to obtain  
9 the documents.” *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 144  
10 (S.D.N.Y. 1997); *see also, e.g., In re Ski Train Fire of November 11, 2000 Kaprun Austria*, 2006  
11 WL 1328259, \*5 (S.D.N.Y. 2006) (*same*); *Addamax Corp. v. Open Software Found., Inc.*, 148  
12 F.R.D. 462, 467 (D. Mass. 1993).

13 136. “Access” and “ability to obtain documents” is found where “documents ordinarily  
14 flow freely between” persons or entities. *Hunter Douglas, Inc. v. Comfortex Corp.*, No. CIV. A.  
15 M8-85, 1999 WL 14007, at \*3 (S.D.N.Y. Jan. 11, 1999).

16 137. The evidence needed by Applicant is or should be in the possession, custody and  
17 control of HUNTINGTON and GORY and CHASE and EJOVI. To the extent there are any  
18 documents that may technically be in the control of another over whom / which HUNTINGTON  
19 and GORY and CHASE and EJOVI have control, those documents are also within the  
20 possession, custody and control of HUNTINGTON and GORY and CHASE and EJOVI. The  
21 evidence in HUNTINGTON and GORY and CHASE and EJOVI’ possession, custody and  
22 control is needed to assist in the ongoing criminal investigations and future prosecutions of and

1 to understand the roles played by each persons and entities who / which are part of and which  
2 benefitted from the Nigerian fraud against Applicant, his predecessors and partners. *See In Re*  
3 *Imanagement Servs., 2005 U.S. Dist. LEXIS 17025, \*10 (E.D.N.Y. Aug. 16, 2005); and*  
4 *Fleischmann v. McDonald's Corp., 466 F. Supp. 2d 1020, 1031 (N.D. Ill. 2006).*

5 **CONCLUSION**

6 138. **WHEREFORE**, in view of the foregoing, Applicant prays (i) for an Order (in the  
7 form attached) directing / permitting the issuance of subpoenas duces tecum (in the forms  
8 attached) to HUNTINGTON and GORY and CHASE and EJOVI to appear and testify and  
9 produce the limited categories of evidence, information, records and documents and (ii) for such  
10 other and further relief as is just and appropriate and consistent with 28 U.S.C. § 1782.

11  
12  
13 Dated: May 16, 2019

Respectfully submitted,

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